

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

**PEÑUELAS VALLEY LANDFILL, LLC.**  
P. O. Box 918  
Punta Santiago, Puerto Rico 00741-0918

**Facility Name**

Peñuelas Valley Landfill  
Road PR-385, Km. 4.5, Tallaboa Ward  
Peñuelas, Puerto Rico

NPDES Tracking Number PRR053203

**RESPONDENT**

Proceeding pursuant to Section 309(a) of the Clean  
Water Act, 33 U.S.C. § 1319(a)

**ADMINISTRATIVE ORDER ON  
CONSENT**

**DOCKET NUMBER  
CWA-02-2018-3104**

**I. PRELIMINARY STATEMENT**

1. This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 309(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a).
2. The Administrator has delegated the authority to take these actions to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division.

**II. STATUTORY AND REGULATORY AUTHORITIES**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with [CWA Section 402], the discharge of any pollutant by any person shall be unlawful."
4. Section 402 of the CWA, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System ("NPDES") as the national program for, among other things, issuing and enforcing discharge permits.

5. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant upon condition that such discharge will meet such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA].”
7. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Part 122, as amended.
8. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b)(1), the NPDES Permit Program requires permits for the discharge of any pollutant from any point source into waters of the United States.
9. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
10. Section 402(p)(2)(B) of the CWA authorizes the Administrator of EPA to issue NPDES permits to stormwater discharges associated with industrial activity.
11. Pursuant to the CWA, EPA promulgated NPDES regulations defining the term “stormwater associated with industrial activity.” 40 C.F.R. § 122.26(b).
12. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), certain facility operators are required to obtain an NPDES permit for stormwater discharges associated with industrial activity.
13. Pursuant to 40 C.F.R. § 122.26(b)(14)(v), landfills, land application sites, and open dumps that receive or have received any industrial waste including those that are subject to the regulation under subtitle D of the Resource Conservation and Recovery Act were included in the definition of stormwater associated with industrial activity.
14. The CWA and its implementing NPDES regulations contain the following definitions:
  - a. “Administrator” means the Administrator of EPA, or an authorized representative. 40 C.F.R. § 122.2;

- b. "Best Management Practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2;
- c. "discharge of a pollutant" means any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
- d. "facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
- e. "industrial activity" means the eleven categories of industrial activities included in the definition of "stormwater discharges associated with industrial activity" as defined in 40 C.F.R. §§ 122.26(b)(14)(i)-(xi);
- f. "navigable waters" means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
- g. "owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
- h. "permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of 40 C.F.R. Parts 122, 123 and 124. The term "permit" does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit." 40 C.F.R. § 122.2;
- i. "person" means an individual, corporation, partnership or association. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
- j. "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
- k. "pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste

discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;

- l. “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles. Section 502(8) of the CWA, 33 U.S.C. § 1362(6);
  - m. “site” means the land or water area where any “facility” or “activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2;
  - n. “stormwater associated with industrial activity” means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. 40 C.F.R. §§ 122.2 and 122.26(b)(14); and
  - o. “waters of the United States” means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2.
15. The following definitions and “terms” apply in this Order:
- a. “Non-structural BMP” means best management practices that generally consist of processes, prohibitions, procedures, and schedules of activities that prevent pollutants associated with industrial activity from contacting with stormwater discharges and authorized non-stormwater discharges. They are considered low technology, cost-effective measures, and do not involve construction and installation, and usually work by changing behavior, persuasion and/or economic instruments;
  - b. “Normal Business Hours” means the dates and times that Respondent operates the Landfill, which for the purpose of this Order, is from Monday to Saturday, from 6:00 am to 5:00 pm, including the holidays established by the Commonwealth of Puerto Rico and the United States of America.
  - c. “Standard Operating Procedure(s)” or “SOP(s)” means the established or prescribed method(s) to be followed routinely for the performance of designated environmental compliance activities, operations, or in designated situations; and

- d. "Structural BMP" means the fixed, permanent physical structures and equipment requiring planning, design construction and maintenance that are designed to remove pollutants from stormwater runoff, reduce downstream erosion, provide flood control and promote groundwater recharge.
- 16. On June 4, 2015, EPA re-issued the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2015 MSGP"), as authorized under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). The 2015 MSGP became effective on June 4, 2015, and will expire on June 4, 2020.
  - 17. The 2015 MSGP establishes requirements, such as, Notice of Intent ("NOI") filing, development and implementation of a Storm Water Pollution Prevention Plan ("SWPPP"), performance of routine facility inspections, implementation of corrective actions, monitoring, reporting and recordkeeping, and other special and sector-specific conditions.
  - 18. Upon the electronic NOI submittal, the discharge authorization under the 2015 MSGP becomes effective thirty (30) days after EPA notifies the applicant that it has received a complete electronic NOI, unless EPA notifies the applicant that the authorization to discharge has been denied or delayed.
  - 19. Appendix A of the 2015 MSGP contains the following definitions:
    - a. "control measures" refers to any stormwater control or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants to waters of the United States;
    - b. "corrective action" means any action taken, or required to be taken, to:
      - 1) repair, modify, or replace any stormwater control used at the site;
      - 2) clean up and dispose of spills, releases, or other deposits found on the site; and
      - 3) remedy a permit violation;
    - c. "measurable storm event" means a precipitation event that results in a measurable amount of precipitation (i.e., a storm event that results in an actual discharge) and that follows the preceding storm event by at least 72 hours (3-days). The 72-hour storm interval does not apply if you document that less than a 72-hour interval is representative for local storm events;

- d. “non-stormwater discharges” means discharges that do not originate from storm events. They can include, but are not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, pavement wash water, external building wash-down, irrigation water, or uncontaminated ground water or spring water;
  - e. “operator” means any entity with a stormwater discharge associated with industrial activity that meets either of the following two (2) criteria:
    - (1) the entity has operational control over industrial activities, including the ability to modify those activities; or
    - (2) the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct workers at a facility to carry out activities required by the permit);
  - f. “qualified personnel” means those individuals who are knowledgeable in the principles and practices of industrial stormwater controls and pollution prevention, and who possess the education and ability to assess conditions at the industrial facility that could impact stormwater quality, and the education and ability to assess the effectiveness of stormwater controls selected and installed to meet the requirements of the permit;
  - g. “significant materials” include, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges; and
  - h. “storm event” means a precipitation event that results in a measurable amount of precipitation.
- 20. Part 6.2.2.1, Table 6-1 and Part 8.L.10 of the 2015 MSGP set forth the required effluent limits stormwater discharge monitoring for non-hazardous waste landfills.
  - 21. Part 6.2.2.1 of the MSGP indicates that an exceedance of the effluent limitation is a permit violation.
  - 22. Pursuant to Part 6.2.2.3 of the 2015 MSGP, if any monitoring value exceeds a numeric effluent limitation, the following actions must be taken by the permittee:

- a. report such exceedance on a “Change NOI” form in the NPDES eReporting Tool (“NeT”); and
  - b. conduct follow-up monitoring within thirty (30) calendar days (or during the next qualifying runoff event, should none occur within thirty (30) days) of implementing corrective action(s) taken per Part 4 of the 2015 MSGP.
23. When the follow-up monitoring referenced in paragraph 22.b, above, exceeds the applicable effluent limitation, the permittee must:
- a. submit to EPA an exceedance report no later than thirty (30) days after the receipt of the laboratory result consistent with Part 7.6 of the 2015 MSGP (i.e. submit the exceedance report to the appropriate EPA Regional Office listed in Part 7.9.1 of the 2015 MSGP, and report the monitoring data through NetDMR); and
  - b. continue to monitor, at least quarterly, until the discharge is in compliance with the effluent limit or until EPA waives the requirement for additional monitoring, and once back in compliance with the effluent limitation indicate such fact on a “Change NOI” form pursuant to Part 7.4 of the 2015 MSGP.
24. Pursuant to Part 6.2.5 of the 2015 MSGP, EPA may notify a permittee of additional discharge monitoring requirements that EPA determines are necessary to meet the 2015 MSGP’s effluent limitations. Any such notice will briefly state the reasons for the monitoring, locations, and parameters to be monitored, frequency and period of monitoring, sample types, and reporting requirements.
25. Pursuant to Part 7.6 of the 2015 MSGP, if follow-up monitoring per Part 6.2.2.3 of the 2015 MSGP exceeds a numeric effluent limit, an Exceedance Report must be submitted to EPA no later than 30 days after receipt of the laboratory results. The Exceedance Report must be sent to the appropriate EPA Regional Office listed in Part 7.9.1 of the 2015 MSGP, and the permittee must report the monitoring data through NetDMR.
26. Section 308(a)(A) of the CWA, 33 U.S.C. § 1318(a)(A), provides that “[w]henever required to carry out the objective of . . . [CWA Section 402], the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”

27. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that “[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an Order requiring such person to comply with such section...”
28. Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), provides that “[a]ny Order issued under [CWA Section 309] shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”
29. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the federal NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations.

### **III. JURISDICTIONAL STATEMENTS**

30. Peñuelas Valley Landfill, LLC. (“Respondent”) is a for-profit corporation organized under the laws of the Commonwealth of Puerto Rico. Respondent is registered in the Puerto Rico Department of State under registration number 4,229.
31. Respondent’s principal office is located at Road PR-3, Intersection with Road PR-923, Km. 1.7, Buena Vista Ward, Humacao, Puerto Rico 00718.
32. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
33. Respondent is the owner and/or operator of a landfill facility, known as Peñuelas Valley Landfill (“PVL” or “Landfill”).
34. The PVL is located at Road PR-385, Km. 4.5, Tallaboa Ward, Peñuelas, Puerto Rico.
35. The Landfill is a “facility” as defined in 40 C.F.R. § 122.2.
36. The Landfill is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
37. At all relevant times to this Order, Respondent has been the owner and/or operator of the Landfill.



38. Respondent's activities at the Landfill mainly consist of the management and disposal of industrial wastewater, industrial/commercial waste and sludge from the Puerto Rico Aqueduct and Sewer Authority ("PRASA") treatment facilities. These operations at the Landfill are best described by the Standard Industrial Classification ("SIC") Code 4953 (refuse system, landfills).
39. Stormwater runoff containing "pollutants" associated with industrial activities conducted at the Landfill is collected in concrete line culverts and ditches that discharge directly into an unnamed creek. This unnamed creek flows along the east and south sides of the Landfill premises, which in turn flows into the Tallaboa Industrial Channel.
40. The Tallaboa Industrial Channel flows into the Caribbean Sea, a territorial sea and navigable water of the United States.
41. The Caribbean Sea is a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
42. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. § 122.

#### **IV. FINDINGS OF VIOLATIONS**

43. On October 5, 2015, Respondent submitted to EPA an electronic NOI to seek coverage under the 2015 MSGP. EPA granted Respondent 2015 MSGP coverage on November 4, 2015, and assigned 2015 MSGP Tracking Number PRR053203 for the Landfill.
44. On August 10, 2016, EPA conducted a Compliance Evaluation Inspection (the "Inspection") of the Landfill. The Inspection revealed, among other things, that Respondent failed to implement adequate structural and non-structural BMPs to minimize the discharge of pollutants into waters of the United States, and to document in its SWPPP the corrective actions taken to ensure compliance with the 2015 MSGP.
45. On November 29, 2016, EPA received from Respondent a copy of the laboratory report of a stormwater runoff sampling event performed on October 18, 2016 ("Sampling Report"). The Sampling Report showed that Respondent exceeded the established effluent limitation of 88 mg/L for Total Suspended Solids ("TSS") in Part 8.L.10 of the 2015 MSGP.
46. On March 1, 2017, EPA issued to Respondent an Administrative Compliance Order ("ACO"), Docket Number CWA-02-2017-3103, to require compliance with the 2015 MSGP, the CWA and its implementing NPDES regulations.

47. Among other things, the ACO required Respondent to submit a Work Plan detailing the actions to be taken at the Landfill to implement structural and non-structural BMPs, to address the TSS effluent limit exceedance reported in October 2016, including compliance with the follow-up monitoring requirements after an effluent limit exceedance occurs, and to submit Monthly Progress Reports (“MPR”), detailing the activities undertaken during the reporting period to achieve compliance with the ACO.
48. On April 5, 2017, Respondent submitted to EPA a Workplan.
49. Between March and June 2017, Respondent sent to EPA correspondence detailing the efforts made to comply with requirements of the ACO.
50. EPA performed a review of Respondent’s aforementioned correspondence, and by letter dated September 14, 2017 (the “September 2017 letter”), notified Respondent that additional information required in several provisions of the ACO needed to be addressed.
51. Among others, Respondent was required to: submit in its work plan to EPA the BMPs for erosion and sediments controls for the stabilization of exposed soils, as required by Part 2.1.2.5 of the MSGP; a revised SWPPP for the Landfill to comply with Parts 4 and 5 of the 2015 MSGP; and documentation detailing the actions taken, pursuant to Part 6.2.2.3 of the 2015 MSGP, after exceeding the effluent limitation for TSS on the sampling performed on October 18, 2016.
52. EPA's review of the Sampling Report revealed that Respondent also exceeded the effluent limitations for Benzoic Acid, Biochemical Oxygen Demand, and Zinc. Also, Respondent did not provide evidence that it had conducted follow-up monitoring for these parameters. The following table summarizes the effluent limits exceedances based on the laboratory report of analysis for the October 18, 2016 sampling event.

SAMPLING EVENT - OCTOBER 18, 2016		
PARAMETER	EFFLUENT LIMIT	REPORTED VALUE
Benzoic Acid	0.12 mg/L (daily maximum)	9.57 mg/L
	0.071 mg/L (monthly average maximum)	9.57 mg/L
Biochemical Oxygen Demand	37 mg/l (monthly average maximum)	77.5 mg/L
Total Suspended Solids	88 mg/l (daily average maximum)	1,510 mg/L

SAMPLING EVENT - OCTOBER 18, 2016		
PARAMETER	EFFLUENT LIMIT	REPORTED VALUE
	27 mg/l (monthly average maximum)	1,510 mg/L
Zinc	0.20 mg/L (daily maximum)	0.312 mg/L
	0.11 mg/l (monthly average maximum)	0.312 mg/L

53. On November 1, 2017, EPA met with Respondent to discuss the September 2017 letter, the outstanding provisions of the ACO, and 2015 MSGP that Respondent has been unable to comply with.
54. In a letter dated November 24, 2017, Respondent submitted to EPA its response to the September 2017 letter highlighting the actions taken to achieve compliance with the ACO and the 2015 MSGP.
55. On April 8 and May 9, 2018, EPA met with Respondent to discuss, among other things, alternatives to bring TSS into compliance with the effluent limit established in the 2015 MSGP.
56. Respondent has taken stormwater water discharge samples at Outfall 001 that resulted on TSS effluent limit exceedances, as detailed in the following table:

TSS Laboratory Results		
Sampling event date	Permit effluent limit	Reported value
October 16, 2017	88 mg/L	250 mg/L
December 6, 2017	88 mg/L	100 mg/L
March 23, 2018	88 mg/L	240 mg/L
May 29, 2018	88 mg/L	248 mg/L

57. As detailed above, Respondent remains in non-compliance with the TSS effluent limit established in Part 8.L.10 of the 2015 MSGP.

## V. CONCLUSIONS OF LAW

58. As described in Paragraphs 43 through 57, above, EPA has found that Respondent failed to comply with the 2015 MSGP.

59. Respondent's violations constitute a violation of Sections 301(a) and 402 of the Act, 33 U.S.C. § 1342, therefore, Respondent is subject to an enforcement action under Section 309 of the Act, 33 U.S.C. § 1319.
60. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA has enforcement authority to issue this Order to address Respondent's violations of the TSS effluent limit established in the 2015 MSGP, issued pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p).

## **VI. CONSENT**

61. Respondent and EPA have negotiated this Order in good faith, and is fair, reasonable, and consistent with the goals of the CWA.
62. Respondent, without admitting liability for the violations asserted in this Order or the factual allegations set forth therein, admits that EPA has authority under Section 309(a) of the Act to issue this Order and agrees to be bound by this Order.
63. The Ordered Provisions (Part VII) of this Order shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors and assigns.

## **VII. ORDERED PROVISIONS**

In consideration of the above Statutory and Regulatory Authorities, Jurisdictional Findings, and Findings of Violations, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable, and Respondent so agrees. The Ordered Provisions contained in the ACO, are superseded by the Ordered Provisions contained hereinafter.

### **EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS THAT:**

64. **Except as otherwise indicated in this Order**, Respondent shall comply with the CWA, its NPDES implementing regulations, the 2015 MSGP, and any NPDES permit Respondent subsequently applies for and obtains.
65. Respondent shall continue to maintain a rain gauge at a suitable location at the Landfill, and shall maintain the rain gauge log for daily data collected at the Landfill to document measurable storm events.
66. Respondent shall continue to maintain a suitable sampling point for Outfall 001 where it can take representative stormwater discharge samples in accordance with Parts 3.2.1, 6.1.3, and B.10 of the 2015 MSGP.

67. Respondent shall continue to conduct Quarterly Visual Assessment of Stormwater Discharges, Benchmark Monitoring, Effluent Limitations Monitoring, and Impaired Waters Monitoring in accordance with Parts 3.2, 6.2.1, 6.2.2, and 6.2.4 of the 2015 MSGP.
68. Respondent shall implement corrective actions and conduct follow-up monitoring as required in Part 4.1 and Part 6.2.2.3 of the 2015 MSGP, respectively, when a discharge exceeds a numeric effluent limit of the parameters listed Table 2-1 and in Table 8.L-2 of Part 8.L.10 of the permit. Also, Respondent must review and revise, as appropriate, the SWPPP (e.g. sources of pollution; spill and leak procedures; non-stormwater discharges; the selection, design, installation and implementation of your control measures) so that the permit's effluent limits are met and pollutant discharges are minimized.
69. **Immediately upon the Effective Date of this Order**, Respondent shall monitor its stormwater discharges through Outfall 001 during normal business hours according to the storm water monitoring conditions, as required in Part 6.1.3 of the MSGP, until Respondent complies with the effluent limit established in the 2015 MSGP for TSS during three (3) consecutive discharge events. Monitoring shall be conducted in accordance with the monitoring procedures established in Parts 6.1.3 and 6.1.4 of the 2015 MSGP, and 40 C.F.R. § 136. The sampling location for Outfall 001 shall be representative of the stormwater discharge monitored.
70. **Immediately upon the Effective Date of this Order**, Respondent shall report the results of the stormwater monitoring required in paragraph 67, above, in accordance with Parts 7.1, 7.2 and 7.4 of the 2015 MSGP.
71. **Within one hundred and fifty (150) calendar days from the Effective Date of this Order**, Respondent shall conduct a comprehensive engineering analysis of measures, such as, but not limited to, structural BMPs, non-structural BMPs, stormwater storage, groundwater recharge, and treatment technologies, to bring TSS discharges into compliance with the effluent limit established in Part 8.L.10 of the 2015 MSGP.

At a minimum, the comprehensive engineering analysis ("Engineering Analysis") shall include the following:

- a. a stormwater runoff hydrology and hydraulic study (H-H Study) covering all areas from which stormwater enters and runs throughout the Landfill, and that are or may be discharged through Outfall 001 or any other locations throughout the Landfill.

The H-H Study shall be based on the Precipitation-Frequency Atlas of the United States (Volume 3, Version 4.0: Puerto Rico and the U.S. Virgin

Islands, or its equivalent) for 24-hour storm events with a return period of 2 years, 10 years, 25 years and 100 years.

The H-H Study shall, among other things:

- 1) identify all major stormwater manmade or natural conveyances (controlled and uncontrolled) coming into the Landfill;
  - 2) identify existing point sources of stormwater run-on, and character of these point sources contributing to stormwater management issues being experienced at the landfill;
  - 3) assess and determine the hydraulic capacities of existing stormwater drainage systems (e.g., channels, retention pond, detention units);
  - 4) provide a calculation of the 24-hour storm event which will trigger the discharge of stormwater from the retention pond through Outfall 001;
  - 5) provide the quantity of stormwater in excess of the as-built retention pond storage capacity for a 24-hour storm event with a return period of 25 years;
  - 6) assess the functional state of the stormwater management systems in place, including the retention pond and Outfall 001 discharge system; and
  - 7) develop an "As-Built Site Drainage Drawing" for the storm water collection and discharge system, including the retention pond.
- b. erosion and sediment controls to minimize pollutant discharges and placing flow velocity dissipation devices at discharge locations to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points; and
- c. expected amount, frequency, intensity, and duration of precipitation, and the nature of stormwater runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. Respondent must consider stormwater controls for stormwater volume, velocity, and peak flow rates to minimize discharges of pollutants in stormwater; and the soil type and range of soil particle sizes expected to be present on the site.

72. **Within a hundred and eighty (180) calendar days from the Effective Date of this Order**, Respondent shall submit to EPA the Engineering Analysis Report

detailing the measures evaluated to bring discharges of TSS through Outfall 001 into compliance with the effluent limits in the 2015 MSGP, and the findings and recommendations of the Engineering Analysis.

The Engineering Analysis Report shall contain at a minimum of three (3) alternatives and the associated estimated implementation cost for each alternative, and a detailed justification for the preferred options to be implemented. The alternatives for TSS treatment and discharge reduction and/or elimination may include the use polymers and/or other chemical treatments, increase retention and evaporation capacity ponds, when feasible, water collection and reuse, and any other alternatives.

73. **Within thirty (30) calendar days of EPA's approval of the Engineering Analysis Report**, Respondent shall submit to EPA, for review and approval, a Compliance Plan that includes:

- a. the measures to be implemented based on the findings and recommendations of the Engineering Analysis Report; and
- b. a schedule for implementing those measures, which shall not exceed three hundred sixty-five (365) days from the date EPA approves the Compliance Plan, unless otherwise extended in writing by EPA. If requested by Respondent, EPA will provide comments and offer guidance while Respondent develops the Compliance Plan.

Upon approval or conditional approval by EPA, the Compliance Plan shall be incorporated by reference into this Order, and shall be enforceable as a part hereof.

74. **That Respondent's Engineering Analysis and the Engineering Analysis Report** shall be conducted, prepared, signed and certified by a licensed engineer who is authorized to conduct the engineering profession in the United States. This licensed engineer shall be knowledgeable in the principles and practices of industrial stormwater controls and pollution prevention, and shall possess the education and ability to assess conditions at the Landfill, and the education and ability to assess the effectiveness of stormwater controls to meet the requirements of the 2015 MSGP.

75. **Beginning on the Effective Date of this Order and within three hundred sixty-five days upon EPA's approval of the Compliance Plan**, Respondent is authorized to discharge, as an interim limit, TSS through Outfall 001 in concentrations not to exceed 638.2 mg/L.

76. Respondent shall prepare and submit to EPA written compliance progress reports

("Progress Reports") covering a two-month period that describe the status and progress of Respondent's actions taken to comply with the Ordered Provisions of this Order. Respondent shall submit the Progress Report to EPA on the tenth (10<sup>th</sup>) day of the month following the end of the two-month period, until this Order is no longer effective or full compliance with this Order has been achieved and EPA notifies Respondent that submissions are no longer required. The first Progress Report is due to EPA by December 10<sup>th</sup>, 2018. If Respondent submit a deliverable to EPA during the compliance filing dates of this Order, Respondent does not have to re-submit such deliverable in future Progress Reports.

The Progress Report shall include:

- a. the specific activities undertaken to bring the Landfill into compliance with the Act, the applicable NPDES regulations and the 2015 MSGP, as provided for in the approved Compliance Plan in paragraph 73, above. In the event that the Compliance Plan has not yet been approved by EPA during the reporting period, Respondent shall include the specific activities and efforts undertaken to bring the Landfill into compliance with the Act, the applicable NPDES regulations and the 2015 MSGP;
- b. the status of the implementation of the Compliance Plan pursuant to paragraph 73, above and Part VIII (Review and Approval Procedures), below;
- c. description of any impediment Respondent encountered in the process to comply with the Ordered Provisions included in this Order and the steps taken to minimize any setbacks in the completion of any activity required as part of this Order; and
- d. a cost report detailing the expenses incurred for the period covered by the Progress Report concerning the milestones and activities performed towards meeting the Ordered Provisions of this Order.

Respondent may, if so desire, assert a business confidentiality claim covering all or part of the cost report information required to be submitted under this Order. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-part B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the submittal when it is received by EPA, it may be made available to the public by EPA without further



notice to Respondent. You should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If Respondent desires confidential treatment of information only until a certain date or until the occurrence of a certain event, Respondent's response should state so.

## **VIII. REVIEW AND APPROVAL PROCEDURES**

77. Unless indicated otherwise in this Order, the review and approval procedures set forth in this Section shall apply to the Engineering Analysis Report and Compliance Plan, or to any other deliverable that Respondent is required to submit for EPA approval pursuant to this Order.
78. After EPA's receipt of the Engineering Analysis Report and Compliance Plan, EPA may: (i) approve the submission; (ii) approve the submission or portions of the submission with specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission and direct Respondent to modify the submission.
79. In the event of approval of the complete submission, Respondent shall proceed to take all actions required in accordance with the schedule contained therein, as approved in writing by EPA.
80. In the event of written partial approval of specified conditions, Respondent shall proceed to take the actions identified in the non-deficient portion.
81. Upon receipt of a notice of disapproval of all or part of the submission from EPA, Respondent shall, within thirty (30) calendar days (or any other extended period authorized by EPA), correct the deficiencies as directed by EPA's written comments and resubmit for approval.
82. In the event that the resubmitted document or portion thereof is disapproved by EPA, EPA may again require Respondent to correct the deficiencies.
83. If Respondent timely submits or resubmits a document for review and approval, and if EPA fails to approve, provide comments or otherwise act on a submittal within ninety (90) calendar days of receipt of the submittal, Respondent shall be entitled to an extension of time as long as Respondent can demonstrate it will not be able to meet the deadline as a result of the length of the review process.
84. If Respondent submits or resubmits a document or other deliverable that fails to contain all of the required elements of this Order, Respondent shall be deemed to have failed to make the submission.

**IX. GENERAL PROVISIONS**

85. Any questions concerning this Order should be directed to Jaime López, Enforcement Officer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5851 / [lopez.jaime@epa.gov](mailto:lopez.jaime@epa.gov).
86. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent, and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

87. All documents required to be submitted under this Order shall be sent to the following addresses:

Director, Water Quality Area  
Environmental Quality Board  
P. O. Box 11488  
San Juan, Puerto Rico 00910,

and

Team Leader, Clean Water Act Team  
Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
48 RD. 165 Km. 1.2  
Guaynabo, Puerto Rico 00968-8069.

88. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision,

set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

89. Notwithstanding any other provision of this Order, Respondent reserves its rights to contest liability in any subsequent action filed by EPA to seek penalties for a violation of this Order, and reserves its rights to contest liability in any subsequent action for any violations EPA has alleged in this Order. Respondent reserves all defenses to any action asserted or taken by EPA under its reservations in this Order or otherwise.
90. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
91. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondent may be subject to: (1) civil penalties up to \$53,484 per day for each day of violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); and/or (2) injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as imposed by the Court.
92. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

#### **X. DELAY OF PERFORMANCE/FORCE MAJEURE**

93. “*Force Majeure*,” for purposes of this Order, is any event entirely beyond the control of Respondent or any entity controlled by Respondent that delays or prevents performance of any obligation under this AOC, notwithstanding Respondent’s best efforts to avoid the delay. The best efforts requirement includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work to be performed under this AOC, Respondent’s financial or business difficulties, and normal inclement weather.
94. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure*, Respondent shall notify, in writing, by telephone and/or electronic mail, the EPA contact identified in Paragraph 83 of this Order, or, in his absence,

the Clean Water Act Team Leader identified in Paragraph 85, within four (4) business days of when Respondent knew or reasonably should have known that the event might cause a delay. Within fifteen (15) calendar days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

95. If EPA agrees that an actual or anticipated delay is attributable to *force majeure*, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the *force majeure* event shall not, of itself, extend the time for performing a subsequent obligation. The time of performance of any subsequent obligation that is directly impacted by an extension of time granted for an obligation due to a *force majeure* event shall be extended at the request of the Respondent. EPA will review Respondent's request and will provide a new set of compliance date(s) in writing, if deemed necessary.
96. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

## **XI. TERMINATION AND SATISFACTION**

97. After Respondent has complied with all the Ordered Provisions of this Order, Respondent may serve upon Clean Water Act Team Leader a Request for Termination. The Request for Termination shall:
  - a. state the actions Respondent has taken at the Landfill to comply with this Order,
  - b. include a Final Compliance Report including all necessary supporting documentation to demonstrate compliance with this Order; and
  - c. be signed and certified in accordance with paragraph 84, above.

The Final Compliance Report shall include a technical analysis and written statement that the implementation of the non-structural and structural BMPs are in place and working properly to sustain compliance with the TSS effluent limit, and

shall be signed and certified by a licensed engineer in accordance with paragraph 72, above.

98. Following receipt by EPA of Respondent's Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and Respondent shall confer informally concerning the Request and any disagreement that EPA and Respondent may have as to whether Respondent has satisfactorily complied with the requirements for termination of this Order. If EPA agrees, it will close-out this Order by informing Respondent in writing of such decision. However, the determination to close-out this Order shall be solely in the discretion of EPA.
99. Any violation of this Order may be grounds for EPA to terminate this Order in its sole discretion.

## **XII. EFFECTIVE DATE AND EFFECT OF CONSENT**

100. This Order shall become effective upon the date of execution by the undersigned Director, Caribbean Environmental Protection Division, Region 2, EPA.
101. Each undersigned signatory to this Order certifies that he is duly and fully authorized to enter into or ratify this Order and all applicable terms and conditions set forth herein.
102. Respondent and EPA shall bear their own costs of this Order, including attorneys' fees.
103. Respondent hereby consents to the issuance of this Order and agrees to be bound thereby.
104. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and Commonwealth of Puerto Rico laws and regulations.

**FOR PEÑUELAS VALLEY LANDFILL, LLC.:**

\_\_\_\_\_  
**RANDY JENSEN**

President

Peñuelas Valley Landfill, LLC.

P. O. Box 918

Punta Santiago, Puerto Rico 00741-0918

Dated: \_\_\_\_\_

**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2:**

\_\_\_\_\_  
**CARMEN R. GUERRERO-PÉREZ**

Director

Caribbean Environmental Protection Division

Environmental Protection Agency, Region 2

City View Plaza II, Suite 7000

48 RD. 165 Km. 1.2

Guaynabo, Puerto Rico 00968-8069

Dated: \_\_\_\_\_

cc: Director, Water Quality Area  
Puerto Rico Environmental Quality Board